

and State equitable sharing arrangements.

(5) *Time of payment.* No payment of any reimbursement under this section will be made to a State or local law enforcement agency before the later of final expiration of the applicable period of limitations for filing a claim for refund by the taxpayer of the taxes recovered as provided in subchapter B of chapter 66 of the Code or the determination of the taxpayer's tax liability, as defined in section 1313(a). However, reimbursement may be made earlier but only if the agency provides adequate indemnification against loss by the Service due to a refund to the taxpayer of Federal taxes recovered.

(6) *Applicability.* The provisions of section 7624 apply only to State and local law enforcement agencies within the United States and the District of Columbia.

(f) *Effective date.* This section applies with respect to information first provided to the Service by a State or local law enforcement agency after February 16, 1989.

[T.D. 8255, 54 FR 21054, May 16, 1989, as amended by 57 FR 2840, Jan. 24, 1992. Redesignated by T.D. 8415, 57 FR 15017, Apr. 24, 1992]

SUPERVISION OF OPERATIONS OF CERTAIN MANUFACTURERS

§ 301.7641-1 Supervision of operations of certain manufacturers.

For regulations under section 7641, except the provisions thereof relating to the manufacture of opium suitable for smoking purposes, see subparts E, F, G, and H or part 45 of this chapter (Miscellaneous Stamp Tax Regulations). For regulations relating to the manufacture of opium suitable for smoking purposes, see 26 CFR (1939) 150 (Narcotics Regulations 3, 3 FR 1402) as made applicable to section 7641 by Treasury Decision 6091, approved August 16, 1954 (19 FR 5167).

POSSESSIONS

§ 301.7654-1 Coordination of U.S. and Guam individual income taxes.

(a) *Application of section—(1) Scope.* Section 7654 and this section set forth the general procedures to be followed by the Government of the United

States and the Government of Guam in the division between the two governments of revenue derived from collections of the income taxes imposed for any taxable year beginning after December 31, 1972, with respect to any individual described in subparagraph (2) of this paragraph (a), and paragraph (e) of this section. To the extent that section 7654 and this section are inconsistent with the provisions of section 30 of the Organic Act of Guam (48 U.S.C. 1421h), relating to duties and taxes to be covered into the treasury of Guam and held in account for the Government of Guam, such section 30 is superseded.

(2) *Individuals covered.* Paragraph (b) of this section applies only to an individual who, for a taxable year, is described in paragraph (a)(2) of § 1.935-1 of this chapter (Income Tax Regulations) and has (or in the case of a joint return, such individual and his spouse have)—

(i) Adjusted gross income of \$50,000 or more, and

(ii) Gross income of \$5,000 or more from sources within the jurisdiction (either the United States or Guam) other than the jurisdiction with which the individual is required to file his income tax return under paragraph (b) of § 1.935-1 of this chapter.

For the determination of gross income and adjusted gross income see sections 61 and 62, and the regulations thereunder, or, when applicable, the corresponding provisions as made applicable in Guam by the Guam Territorial income tax (48 U.S.C. 1421i). For purposes of this paragraph, gross income consisting of compensation for military or naval service shall be taken into account notwithstanding section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. 574). However, see paragraph (e) of this section.

(b) *Allocation of tax.* (1) Net collections of income taxes imposed for each taxable year beginning after December 31, 1972, with respect to each individual described in paragraph (a)(2) of this section for such year shall be divided between the United States and Guam by the Commissioner of Internal Revenue and the Commissioner of Revenue and Taxation of Guam as follows:

(i) Net collections attributable to income from sources within the United States shall be covered into the Treasury of the United States.

(ii) Net collections attributable to income from sources within Guam shall be covered into the treasury of Guam, and

(iii) Net collections not described in subdivision (i) or (ii) of this subparagraph (i.e., net collections attributable to income from sources other than within the United States or Guam) shall be covered into the treasury of the jurisdiction (either the United States or Guam) with which the individual is required to file his return under paragraph (b) of §1.935-1 of this chapter for such year.

(2) The amount of tax of any individual for a taxable year which shall be allocated to Guam for purposes of determining the portion of the net collections from such individual which shall be covered into the treasury of Guam by the United States for such year shall be that amount which bears the same ratio to such amount of tax as the adjusted gross income of that individual for such year which is allocable to sources in Guam bears to the total adjusted gross income of such individual for such year. For purposes of such allocation by the United States, the adjusted gross income of the taxpayer shall be determined by taking into account any compensation of any member of the Armed Forces for services performed in Guam the withheld tax on which is paid into the treasury of Guam pursuant to paragraph (e) of this section. The amount of tax of any individual for any taxable year which shall be allocated to the United States for purposes of determining the portion of the net collections from such individual which shall be covered into the Treasury of the United States by Guam for such year shall be that amount which bears the same ratio to such amount of tax as the adjusted gross income of that individual for such year which is allocable to sources in the United States bears to the total adjusted gross income of such individual for such year.

(c) *Definitions and special rules.* For purposes of this section—

(1) *Net collections.* (i) In determining net collections for a taxable year, appropriate adjustment between the two jurisdictions shall be made on a proportionate basis for underpayments of income taxes for such taxable year, credits allowed against the income tax for such taxable year (other than the credit for taxes withheld under section 3402 on wages), and refunds made of income taxes paid with respect to such taxable year. Thus, if a net operating loss results in a carryback to an earlier taxable year which gives rise to a refund for that earlier year, an adjustment must be made based upon the proportion which the amount of tax covered by one jurisdiction into the treasury of the other jurisdiction for that earlier year bears to the total amount of tax paid for that earlier year, even though the loss may have resulted from activities in one jurisdiction and the income, against which the loss was offset, was earned in the other jurisdiction. Similar adjustments must be made for foreign tax credit carrybacks even though different jurisdictions are involved. If, for example, an individual pays income tax of \$30,000 to the United States for 1974 and \$10,000 of such tax is covered into the treasury of Guam, and if for 1975 such individual has a net operating loss attributable to a trade or business carried on in the United States which loss is carried back to 1974 and gives rise to a refund of \$15,000 by the United States, Guam must cover into the Treasury of the United States the amount of \$5,000 which is the adjustment based upon the refund ($\$15,000 \times \$10,000 / \$30,000 = \$5,000$).

(ii) Tax withheld from the compensation of any member of the Armed Forces described in paragraph (a)(2) of this section which is paid to Guam pursuant to section 7654(d) and paragraph (e) of this section shall be taken into account in determining the amount required to be covered into the treasury of Guam under paragraph (b)(1)(ii) of this section.

(iii) For purposes of this subparagraph, any underpayment of tax is treated as attributable on a pro rata basis to income from sources within the United States, Guam, and sources other than within the United States or

Guam, respectively, and is divided between the United States and Guam under the rules in paragraph (b) of this section.

(2) *Income taxes.* The term “income taxes” means—

(i) With respect to taxes imposed by the United States, the income taxes imposed by chapter 1 of the Code, and

(ii) With respect to taxes imposed by Guam, the Guam Territorial income tax (48 U.S.C. 1421i).

(3) *Source rules.* The determination of the source of income shall be based on the principles contained in sections 861 through 863, and the regulations thereunder, or, when applicable, in those sections as made applicable in Guam by the Guam Territorial income tax. For such purposes the provisions of section 514 of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 App. U.S.C. 574) relating to the determination of the source of income of members of the Armed Forces shall not be taken into account. For purposes of this subparagraph, the provisions in section 935(c) treating Guam as part of the United States, and vice versa, do not apply. For definition of the terms “United States” and “Guam” (see section 7701(a)(9) of the Code and section 2 of the Organic Act of Guam (48 U.S.C. 1421).

(d) *Information return.* Each individual described in paragraph (a)(2) of this section for a taxable year who is required by paragraph (b)(1) of § 1.935-1 of this chapter to file his return of income for such year with the United States shall timely file a properly executed Form 5074 (Allocation of Individual Income Tax to Guam) by attaching such form to his income tax return. Each individual described in paragraph (a)(2) of this section for a taxable year who is required by paragraph (b)(1) of § 1.935-1 of this chapter to file his return of income for such year with Guam shall timely file such information as may be required by the Commissioner of Revenue and Taxation with respect to his income derived from sources within the United States. See section 6688 and § 301.6688-1 for the penalty for failure to comply with this paragraph.

(e) *Military personnel in Guam.* The Commissioner of Internal Revenue

shall arrange to pay to Guam the amount of the taxes deducted and withheld by the United States under section 3402 from wages paid to members of the Armed Forces who are stationed in Guam but who have no income tax liability to Guam with respect to such wages by reason of section 514 of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 App. U.S.C. 574). Section 514 of that Act provides in effect that for purposes of the taxation of income by Guam a person shall not be deemed to have lost a residence or domicile in the United States solely by reason of being absent therefrom in compliance with military or naval orders and the compensation for military or naval service of such a person who is not a resident of, or domiciled in, Guam shall not be deemed income for services performed within, or from sources within, Guam. Any amount paid to Guam under this paragraph in respect of a member of the Armed Forces described in paragraph (a)(2) of this section shall be taken into account in determining the amount required to be covered into the treasury of Guam under paragraph (b)(1)(ii) of this section. For purposes of this paragraph, the term “Armed Forces of the United States” has the meaning provided by § 301.7701-8 of this chapter. This paragraph does not apply to wages for services performed in Guam by members of the Armed Forces of the United States which are not compensation for military or naval service. In determining the amount of tax to be covered into the treasury of Guam under this paragraph with respect to remuneration for services performed in Guam by members of the Armed Forces of the United States, the special procedure agreed upon with the Department of Defense in 1951 shall not apply to remuneration paid after December 31, 1974. Under that procedure the tax withheld under section 3402 upon such remuneration for services performed in Guam during April and October of each year was to be projected for the appropriate six-month period of which the base month is a part, thereby arriving at an estimated figure for semiannual withholding tax to be covered over.

(f) *Transfers of funds.* The transfers of funds between the United States and

Guam required to effectuate the provisions of this section shall be made when convenient for the two governments, but not less frequently than once in each calendar year. In complying with paragraph (b) of this section, only net balances will be transferred between the two governments. Further, amounts transferred pursuant to paragraph (b) of this section may be determined on the basis of estimates rather than the actual amounts derived from information furnished by taxpayers, except that the net collections for 1973 and every third calendar year thereafter are to be transferred on the basis of the information furnished by taxpayers pursuant to paragraph (d) of this section. In order to facilitate the transfer of funds pursuant to this section, the Commissioner of Internal Revenue and the Commissioner of Revenue and Taxation of Guam shall exchange such information, including copies of income tax returns, as will ensure that the provisions of section 7654 and this section are being properly implemented.

[T.D. 7385, 40 FR 50265, Oct. 29, 1975]

Definitions

§ 301.7701-1 Classification of organizations for federal tax purposes.

(a) *Organizations for federal tax purposes*—(1) *In general*. The Internal Revenue Code prescribes the classification of various organizations for federal tax purposes. Whether an organization is an entity separate from its owners for federal tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.

(2) *Certain joint undertakings give rise to entities for federal tax purposes*. A joint venture or other contractual arrangement may create a separate entity for federal tax purposes if the participants carry on a trade, business, financial operation, or venture and divide the profits therefrom. For example, a separate entity exists for federal tax purposes if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent. Nevertheless, a joint undertaking merely to share expenses does not cre-

ate a separate entity for federal tax purposes. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they have not created a separate entity for federal tax purposes. Similarly, mere co-ownership of property that is maintained, kept in repair, and rented or leased does not constitute a separate entity for federal tax purposes. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes.

(3) *Certain local law entities not recognized*. An entity formed under local law is not always recognized as a separate entity for federal tax purposes. For example, an organization wholly owned by a State is not recognized as a separate entity for federal tax purposes if it is an integral part of the State. Similarly, tribes incorporated under section 17 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. 477, or under section 3 of the Oklahoma Indian Welfare Act, as amended, 25 U.S.C. 503, are not recognized as separate entities for federal tax purposes.

(4) *Single owner organizations*. Under §§ 301.7701-2 and 301.7701-3, certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

(b) *Classification of organizations*. The classification of organizations that are recognized as separate entities is determined under §§ 301.7701-2, 301.7701-3, and 301.7701-4 unless a provision of the Internal Revenue Code (such as section 860A addressing Real Estate Mortgage Investment Conduits (REMICs)) provides for special treatment of that organization. For the classification of organizations as trusts, see § 301.7701-4. That section provides that trusts generally do not have associates or an objective to carry on business for profit. Sections 301.7701-2 and 301.7701-3 provide rules for classifying organizations that are not classified as trusts.

(c) *Cost sharing arrangements*. A cost sharing arrangement that is described in § 1.482-7T of this chapter, including any arrangement that the Commissioner treats as a CSA under § 1.482-